

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

JANE DOE,

Plaintiff,

v.

**RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA,**

Defendant.

Case No. 3:23-cv-00018-RSB

MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO SEAL

Pursuant to Western District of Virginia Local Rule 9, Defendant the Rector and Visitors of the University of Virginia (“UVA” or “Defendant”), through counsel, moves for entry of an order permitting Defendant to file exhibits to its Reply Brief in Support of Motion for Summary Judgment (ECF No. 96) under seal. In support thereof, Defendant states as follows:

BACKGROUND

1. Plaintiff filed this action relating to the Title IX investigation conducted by UVA after Plaintiff reported in March 2020 that a professor had grabbed her without her consent during a study abroad trip in December 2018 and January 2019. After the investigation resulted in a finding that there was sufficient evidence to conclude that the professor sexually assaulted Plaintiff, UVA barred the professor from ever working at UVA again.

2. Plaintiff claims that UVA was deliberately indifferent to actual notice that John Roe was sexually harassing her. *Id.* at ¶¶ 267-68. Plaintiff alleges that almost every aspect of UVA’s Title IX investigation and proceedings were flawed and amounted to deliberate indifference. *Id.* at ¶ 277.

3. This Court granted Plaintiff leave to proceed under a pseudonym. ECF No. 44.

4. On October 23, 2024, UVA filed its Reply Brief in Support of Motion for Summary Judgment (ECF No. 96).

5. Defendant seeks leave to file the following documents under seal:

- a. Plaintiff's June 24, 2024 Response to Defendant's First Discovery Requests. ECF No. 96-6.
- b. Plaintiff's Pharmacy Copay Report. ECF No. 96-8.
- c. Plaintiff's August 29, 2024 Response to Defendant's Deficiency Letter. ECF No. 96-9.

6. All of these documents contain sensitive information regarding Plaintiff's medical care and conditions.

7. On October 23, 2024, counsel for Defendant conferred by email with Plaintiff's counsel regarding filing these exhibits under seal. Plaintiff does not oppose the granting of this motion.

ARGUMENT

Although “[t]here is a general presumption in favor of ‘public access’ to documents in the files of the courts . . . [a] district court has discretion to seal documents when the ‘public’s right of access is outweighed by competing interests.’” *Klon Indus. v. E.I. Du Pont de Nemours & Co.*, No. 3:11-cv-622, 2012 U.S. Dist. LEXIS 55982, at *4 (E.D. Va. Apr. 20, 2012) (quoting *In re Knight Publishing Co.*, 743 F.2d 231, 235 (4th Cir. 1984)). “Before sealing documents, district courts must: ‘(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object; (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting [the] decision to seal the

documents and for rejecting the alternatives.” *Id.* (quoting *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000)).

The docketing of this Motion to Seal and Memorandum in Support satisfies the “public notice” element of the procedural portion of the Fourth Circuit’s sealing standard. *See Clehm v. BAE Sys., Inc.*, No. 7:16-cv-12, 2017 U.S. Dist. LEXIS 40326, at *3-4 (W.D. Va. Mar. 21, 2017).

Defendant asks this Court for leave to file under seal the documents described in Paragraph 6 above.

These documents contain sensitive information regarding Plaintiff’s medical care and conditions and/or are medical records of Plaintiff. Plaintiff’s discovery responses contain personal and sensitive details about her damages, including Plaintiff’s mental health.

Redactions are not sufficient to protect the identity of Plaintiff. Even if Defendant redacted all mentions of Plaintiff’s name, that would not sufficiently protect the confidential and sensitive nature of these documents

Finally, Plaintiff is in no way prejudiced by sealing these exhibits. Plaintiff seeks to protect and keep confidential her own identity. Plaintiff filed this action under a pseudonym. ECF No. 21 at 1 n.1. Plaintiff sought leave to proceed under pseudonym, which this Court granted. ECF No. 44. For all the depositions in this matter, Plaintiff, with the agreement of counsel for Defendant, has changed any reference to Plaintiff’s real name to the pseudonym Jane Doe. Sealing these documents would serve Plaintiff’s goal of protecting her identity.

Pursuant to Local Rule 9(b)(2), Defendant, by counsel, tenders to the Court, in camera, the documents proposed to be sealed.

Defendant proposes to seal these exhibits for the duration that this matter is active on the docket of this Court and any appeals thereafter, and, at the conclusion of any appeal, that the

exhibits would be removed from the records of this Court and be destroyed or returned to the parties.

CONCLUSION

For the reasons set out above, Defendant the Rector and Visitors of the University of Virginia moves for entry of an order permitting submission, under seal, of the documents identified herein as exhibits to Reply Brief in Support of Motion for Summary Judgment (ECF No. 96).

Respectfully submitted,

**THE RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA**

By Counsel: /s/ Christopher P. Bernhardt

Christopher P. Bernhardt* (VSB No. 80133)

Assistant Attorney General

Office of the Virginia Attorney General

202 North 9th Street

Richmond, Virginia 23219

Telephone: (804) 371-0977

Facsimile: (804) 371-2087

Email: cbernhardt@oag.state.va.us

**Counsel of Record for Defendant*

Amy E. Hensley* (VSB No. 80470)

Associate University Counsel/Assistant Attorney
General

1827 University Avenue

Charlottesville, Virginia 22904

Telephone: (434) 924-3685

Email: aehensley@virginia.edu

**Counsel of Record for Defendant*

Jason S. Miyares
Attorney General of Virginia

Thomas J. Sanford
Deputy Attorney General

Jacqueline C. Hedblom
Senior Assistant Attorney General/ Trial Section Chief

CERTIFICATE

I hereby certify that on October 23, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Christopher P. Bernhardt
Christopher P. Bernhardt* (VSB No. 80133)
Assistant Attorney General